Cassation see Mr. Richard Hale's "The Dreyfus Story," page 23). The work of the Court of Cassation was not a retrial, but practically an examination of the Dreyfus side of the case — its process was largely secret. It is to be noted that in neither English nor American law is there a like provision for the reopening of a criminal case after verdict because of new evidence. Texas seems the sole exception — there a court of criminal appeal may review the facts after verdict. The retrial of Dreyfus began on August 8, 1899, and continued until September 8th. The trial — save four days which were occupied with the examination of documents — was public. The evidence, as far as we know it, given at that trial sums up — to the ordinary reader — something thus: there had been a leakage in the offices of the general staff by which important military information had gone to foreign nations. It seems Dreyfus was rather a prying busybody, not a very efficient officer. There appeared no direct evidence connecting Dreyfus with any treasonable practice. Certain methods of French procedure at that trial — as in the whole series of trials — seem to the Anglo-Saxon absurdities. The witnesses told their stories, ideas and beliefs, and lugged in extraneous matter as they pleased. There was no efficient cross-examination allowed; hearsay from unreliable sources, mere gossip, was constantly reported that no English or American court — even military — would receive; the depositions of foreign attachés who presumably had knowledge of the affair were refused, perhaps on sound political reasons; a great part of the testimony was devoted to besmirching Dreyfus's personal character; the generals of the army consistently bullied the minor officers who sat as judges; and more than all these, there was, as there had been in all the trials, a constant dwarfing of the prisoner's right to a full hearing when it came, or seemed to come, in conflict with the political interests of the country and the French army. That is, for us, the amazing aspect of the case. That the rights of the individual must yield before the necessities of state is a fundamental proposition of the French law, on it the sole system of so-called "administration" law of continental countries rests. Perhaps we Anglo-Saxons cannot understand that principle or the extent to which it should be carried, but it seems impossible to get away from the conclusion that it was flagrantly misused to convict a man against whom there were insufficient proofs. Under such conditions Dreyfus was found guilty of treason with extenuating circumstances, to be immediately pardoned by President Loubet.

A DEVELOPMENT OF THE JAMESON RAID. — To those who recall the Transvaal raid of 1895 simply as a premature expression of a political ambition which to-day is concentrating the whole power of England upon the South African Republic, it is well to point out the startling liabilities of the Hon. Cecil Rhodes, if the rest of Jameson's men follow the example set in the recent case of *Burrows* v. *Rhodes and Jameson*, 80 L. T. Rep. 591.

A trooper sued the instigators of the raid for damages sustained on that expedition. The fraudulent misrepresentation that they were to protect the lives of English citizens under the sanction of Her Majesty, it was claimed, had caused the plaintiff in good faith to "render himself liable to severe punishment for violating the laws of England." On demurrer it was argued for the defendant that the court should refuse its aid since the declaration disclosed the plaintiff's own criminality in violating the

Foreign Enlistment Act and since *in pari delicto melior est conditio defendentis*. Whether or not this declaration did admit the plaintiff's criminality may well be doubted. Though it stated that the plaintiff's act had rendered him liable to punishment for crime, his good faith was also alleged and by the demurrer admitted. These allegations were doubtless inconsistent, since ignorance of essential facts would prevent the existence of the criminal intent. Judge Kennedy assumed, however, the construction most favorable to the defendant: that this was one of that limited class of statutory crimes which require no general intent. To such cases he wisely denied the application of the defendant's broad proposition (though laid down by Lord Lyndhurst, C. B., in *Colburn* v. *Patmore*, 1 Cr. M. & R. 73) that no criminal can have an action for indemnity against one who participated in his offence.

It would seem, indeed, that wherever a plaintiff through reasonable mistake of fact has subjected himself to prosecution or suit, he may seek indemnity from one who procured his wrongful act. Thus, one who innocently converted goods in reliance on the misrepresentations of the defendant may have indemnity. *Adamson* v. *Jarvis*, 4 Bing. 66. On the contrary, a plaintiff, who had accepted a bill of exchange to compound a felony which the defendant was about to prosecute, could not seek indemnity for costs sustained in a suit on the void bill by a worthless indorsee of the defendant. *Fivaz* v. *Nichols*, 2 Com. B. 501. From these cases it appears that the true interpretation of the maxim of *par delictum* emphasizes less the fact that the parties are liable for the same faults, than the fact that the faults are equal. The test of the latter is the parties' intent. They are not equally at fault when the plaintiff can say as a reasonable man that he committed the offence without evil intent at the instigation of the defendant.

Revocation of Guaranty by Death of Guarantor.—The confusion in the law as to whether the death of a guarantor amounts to a revocation of his guaranty, in so far as reliance upon it after that time is concerned, rests mainly upon the fact that many courts fail to distinguish between the several groups into which such contracts naturally fall. In a bare agreement to guarantee, made in the expectation of a future sale to a third person, it is difficult to find any consideration until such sale actually takes place. A sale made after the death of the guarantor, therefore, cannot amount to a completion of the contract; for the doctrine of mutual assent demands that both parties be living at the time the contract is made. It is different, however, when the consideration passes upon the making of the agreement to guarantee. Here the bargain is complete; hence the liability of the guarantor is not terminated by his death but passes to his executors or administrators. *Kernochan* v. *Murray*, 111 N. Y. 306. The result is the same in a guaranty under seal, though it rests on a different principle; it is the seal and not the passing of any consideration that makes it a contract. It would seem to make no difference, therefore, if the guarantor dies before any action is taken in regard to his guaranty.

The authorities are not entirely in accord with the views here expressed. In *Jordan* v. *Dobbins*, 122 Mass. 168, it was held that a guaranty even though under seal is revoked by the death of the guarantor. This case is quoted at some length and with approbation in a recent decision of the Kentucky Court of Appeals. *Aitken* v. *Lang's Admr.*, 51 S. W. Rep.